

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

CROSSING RECOVERY SYSTEMS INC. d/b/a
CROSSING REHABILITATION SERVICES

and

AMALGAMATED LOCAL 298, INTERNATIONAL
UNION OF ALLIED NOVELTY AND PRODUCTION
WORKERS, AFL-CIO

Case Nos. 29-CA-26118
29-CA-26133
29-CA-26156
29-CA-26166
29-CA-26167
29-CA-26296
29-CA-26298
29-CA-26299
29-CA-26300

Haydee Rosario, Esq., Counsel for the General
Counsel.
Clifford P. Chalet, Esq., Counsel for the Respondent.

DECISION

Statement of the Case

HOWARD EDELMAN, Administrative Law Judge. Upon charges filed in Case Nos. 29-CA-26118, 29-CA-26133, 29-CA-26156, 29-CA-26166, 29-CA-26167, 29-CA-26296, 29-CA-26298, 29-CA-26299 and 29-CA-26300, respectively, by Amalgamated Local 298, International Union of Allied Novelty and Production Workers, AFL-CIO, herein the Charging Party or the Union, against Crossing Recovery Systems, Inc. d/b/a Crossing Rehabilitation Services, Inc., herein called Respondent, an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing issued on May 20, 2004. The Consolidated Complaint alleges that Respondent violated Section 8(a)(1) and (3) of the Act.

The trial in this matter was held in New York, New York, on August 3, 4 and 5, and on September 20 and 21, 2004.

Briefs were filed by Counsel for the General Counsel and Counsel for Respondent. Based upon the entire record herein, including the testimony and demeanor of witnesses, I make the following findings of fact, and conclusions of law.

Statement of Facts

Respondent has its principal office and place of business located at 450 Waverly Avenue, Patchogue, New York, herein called the Patchogue facility, and another facility located at 60 Carleton Avenue, Suite 204, Islip Terrace, New York, herein called the Islip Terrace facility. Respondent also has other facilities located in Suffolk and Nassau counties.

Respondent is engaged in the business of providing drug and alcohol rehabilitation services. Respondent's Chief Executive Officer and sole shareholder is Frank Buonanote. Buonanote's main office is located at the Patchogue facility. Buonanote testified that his father founded his business and Respondent is part of his family legacy.

During the past year, which period is representative of its annual operations generally, Respondent, in the course and conduct of its operations derived gross annual revenues in excess of \$250,000. During the past year, which period is representative of its annual operations generally, Respondent, in the course and conduct of its business operations described above, purchased and received at its Islip Terrace facility, goods, supplies and materials valued in excess of \$5,000, from suppliers located within the State of New York, which suppliers, in turn, purchased and received said materials from suppliers located outside the State of New York.

It is admitted that Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

It is also admitted that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

Respondent's supervisors, as defined in Section 2(11) of the Act, include Alicia O'Connor, Executive Director, and Sarah Navas, the Senior Office Manager. O'Connor oversees all the clinical and administrative functions within Respondent's five sites. Her office is also located at the Patchogue facility. O'Connor reports directly to Buonanote.

Navas testified she has worked for Respondent since April 1991. Navas has been the Senior Office Manager since May 2002. Her office is also located at the Patchogue facility. Navas is responsible for overseeing all office procedures and the office managers in the five facilities operated by Respondent. She testified that she visits the five facilities, usually on a bi-monthly or quarterly basis, to oversee and audit them. Navas reports directly to Buonanote and O'Connor.

Although Navas has been employed by Respondent for about two years, she has had a close personal relationship with Buonanote for about 11 years.¹

From November 2003, when the Union campaign began, until December 2003, Thomas Kenney and Brian Logan, supervisors within the meaning of the Act, were Directors and supervisors of the Islip Terrace facility. During this period, Kenney was also doing work as a senior counselor. At sometime before the Union campaign, Kenney became the sole Director for the Islip Terrace facility.

During the Union's campaign, the administrative staff consisted of an office manager, Kathy Hyde, a Section 2(11) supervisor, and three secretaries, Christina Mazzuco, Lillian Gouge and Andrea DiFolco. Kenney described the secretaries' job responsibilities as answering the telephones, records keeping, filing the records away, storing the records away, collecting payments for clients and handling clients' appointments.

¹ Navas was questioned on cross examination and by the undersigned Judge as to the nature of this relationship and refused to answer questions on this subject. Based upon this refusal to answer questions, I find that such refusal to answer reflects negatively on her credibility.

There were about twelve counselors and/or clinical staff employees. Kenney and a senior counselor JoAnn Barrett, an admitted 2(11) supervisor, supervised the clinical employees. Heather Dale, a counselor, was the only LPN employed at the Islip Terrace facility. Evelyn Cabral, an admitted 2(11) supervisor, was the Director of Managed Care.

Respondent's Unfair Labor Practice Campaign

In early November 2003, the Union began its organizing campaign by meeting with a group of employees at the home of Pat Russo, a counselor at the Islip Terrace facility who had been terminated prior to the Union's campaign.² Russo and Heather Dale, an LPN and a Counselor, were the employees who initially contacted the Union. Dale was the main Union organizer. She collected cards, spoke to employees about the Union and organized the Union meetings.

Respondent first learned of the Union's campaign when the Union filed a petition for election on December 29, 2003, in Case No. 29-RC-10145. Pursuant to a Decision and Direction of Election issued on February 10, a representation election was conducted on March 9, for the following bargaining unit:

All full-time and regular part-time counselors, clerical employees and managed care coordinators employed at Respondent's Islip Terrace facility, excluding all directors, managers, guards, nurses, social workers and other professional employees as defined in the Act, and supervisors as defined in the Act.

Supervisor Barrett testified that in early January, 2004 she attended the first managerial meeting held by Respondent to discuss the Union's campaign. The meeting was conducted by Buonanote. Kenney was present. There were no employees present. According to Barrett, Buonanote questioned his supervisors as to who was involved with the Union. He asked for the names of such employees and any information about these employees' Union activities. Barrett credibly testified that at this meeting, Buonanote told them that if the Union came in, "the only thing that the employees could do was to strike" and that he was already arranging for their replacements. At this meeting, Buonanote informed Kenney and Barrett that he had talked to certain owners from other independent treatment facilities. Barrett credibly testified that "they would work with him if the Union came in." Buonanote stated that he hated unions and that he would rather see the Islip Terrace facility closed rather than having a union representing the employees.³

It is undisputed that after learning that the Union was seeking to represent its employees, Buonanote and Navas began to visit the Islip Terrace facility almost on a daily basis. Barrett, who worked five days a week, credibly testified that from the beginning of her employment in April 2003 until January 2004, she had seen Buonanote only once at the Islip Terrace facility. Supervisor Barrett testified that;

"When I started to work there Frank [Buonanote] was never in the office until we had word of the Union, then he was there all the time. He was over people's shoulders, he was sitting down at their desks, he was constantly bringing up the

² Russo did not file an unfair labor practice charge.

³ As set forth in detail below, I credit all of General Counsel's witnesses, and discredit all of Respondent's witnesses.

Union, he was constantly asking people what they thought about the Union, why did they want a union, what was going on there, not offering any solutions, it was just, we don't need a union around here, don't want to have a union..."

5 In January, 2004⁴ General Counsel's witnesses testified that during Buonanote's and Navas' visits to the Islip Terrace facility, Buonanote and Navas searched through employees' in-boxes, message holders, message books, faxes, and interrogated the employees about their messages. Secretary Mazzuco testified that after the Board faxed the Petition to Respondent, Buonanote and Navas came in to the Islip Terrace facility regularly, to search the counselors' in-boxes and message books. Secretary DiFolco and office manager Hyde were also present. 10 Mazzuco testified that Buonanote "seemed agitated", he was looking through the counselors things.

15 That same day, Buonanote called Mazzuco to one of the conference room to ask her if she knew that the Union was trying to organize the employees at the Islip Terrace facility. Buonanote asked Mazzuco if she knew anything about the Union's campaign. No one else was present. Mazzuco credibly testified that Buonanote told her that employees like Dale were going to try to convince her to vote 'yes' for the Union. During this conversation, Buonanote told Mazzuco that all unions were bad, and if the union came in he would change everything around. 20 That she would not be able to park her car in the parking lot and that the Union would hurt her family and boyfriend. When Mazzuco asked why would the Union want to hurt her family, Buonanote responded because all the unions are bad. Mazzuco further testified that Buonanote told her that the business was his father's legacy and he did not want it destroyed.

25 A few days later, Mazzuco saw Buonanote and Navas again. That day, Buonanote took the fax machine apart and told office manager Hyde that he wanted to see everything that came through the fax before it was distributed to the employees.

30 DiFolco also testified that she was present when Buonanote and Navas were searching the employees' in-boxes, reading the employees' messages and shredding certain Union literature that they found. DiFolco testified that Buonanote instructed office manager Hyde not to make any copies of Union literature and that Respondent was "still" his company.

35 That same day, DiFolco saw Buonanote and Navas again at about 5:00 p.m. Buonanote again searched the mailboxes again and shredded some other Union literature. Buonanote then approached DiFolco to ask her if she knew anything about the Union. He also asked DiFolco if anyone had approached her to discuss the Union. DiFolco told him that she did not know anything. Buonanote told DiFolco, "That a union had no place at Crossings, and that unions were corrupt. And, that they would come after her boyfriend or family." DiFolco did not 40 respond. Buonanote then asked DiFolco if she knew who she was going to vote and if she knew who was the ringleader? DiFolco continued to assert that she did not know anything.

45 Office manager Hyde testified there were various faxes coming in to the Islip Terrace facility sent by the Board, the Union and by Respondent. On or about February 10, she saw Buonanote and Navas again searching the employees-mail boxes and shredding some documents. Hyde testified that she did not put the Union literature that was shredded by Buonanote in the mailboxes.

50 Secretary Mazzuco testified that during a meeting with supervisor O'Connor on or about

⁴ All dates hereafter are in 2004, unless otherwise stated.

February 12, she told O'Connor that she believed that searching the employees' in-boxes was an attempt to intimidate employees, and that it was wrong to do so. She described Buonanote's conduct to O'Connor as "nerve racking." O'Connor told Mazzuco that she was going to communicate her comments to Buonanote. Mazzuco testified that she and office manager Hyde were the individuals who put the documents relating to the Union's campaign, some of them coming from the Board, in the employees' in-boxes. Prior to the Union's campaign, the employees were allowed to use the in-boxes and message holders for non-business related material, such as personal invitations to picnics, exchanging video tapes, books, etc. Office manager Hyde credibly testified that the employees were never instructed to use the in-boxes and faxes for business purposes until after the Union began its campaign.

According to supervisor Barrett, during one of Buonanote's and Navas' visits, described above, Buonanote made another visit and proceeded to search through employees' desks, books and their offices. It is undisputed that the counselors were not assigned a particular desk and that all the counselors and supervisors shared whatever office or desk was available. Barrett testified that during one of Buonanote's many searches in January, she was sitting at a desk used by supervisor Cabral and by other counselors, and that Buonanote, without speaking to her, searched the drawers of the desk that she was sitting at, searched the entire office, and then proceeded to the next office to continue his search. She testified that she heard Buonanote continue to open the drawers of the desks of other employees.

LPN Dale credibly testified that on or about January 23, Buonanote met with the employees, on a one-to-one basis, to interrogate them about their support and sympathies for the Union. Buonanote told Dale that he wanted to talk to all the employees, on a one-to-one basis, about the Union. He then asked Dale why she felt the need for a union. Dale testified that she told Buonanote that the employees needed a union to negotiate for them regarding their concerns about safety at work, employment benefits and job security. During this conversation, Dale testified that Buonanote told her that;

"...he was not going to go along with any union negotiations, that he wasn't going to have them come in and tell him what to do and how to run what was his father's business."

Dale further testified that during this conversation, Buonanote also told her that if a Union came in, the employees would have to go on strike. Specifically, Dale testified:

"He said, if the Union comes in I'm not going to be in better shape so you're going to have to strike and then your jobs will be replaced by other people and you would have to wait until they left that position before he would have to offer us our jobs back."

On February 9, Buonanote came into the office where employee Macken was working to "educate" her about unions. He told her that the unions were violent people, and that "they roll their cars." Macken testified that Buonanote was talking about unions in general. Buonanote continued to explain how unions had burned down people's houses, and assaulted people. Macken testified that she felt threatened by what Buonanote was telling her. During this conversation, Buonanote told Macken that he would never allow anybody from the outside to come in, and that he would never negotiate with the Union. Macken stated that she felt threatened by Buonanote's comment because of the language that Buonanote used to describe the unions and his unwillingness to negotiate.

Supervisor Barrett testified that Respondent's first meeting with the employees to discuss the Union's campaign was held on February 10. Barrett credibly testified that Kenney, O'Connor and about nine employees were present at this meeting. Buonanote conducted the meeting. Barrett testified that the meeting began by Buonanote telling employees that he
 5 wanted to educate them about the Union, and about what they could do or could not do for them. Buonanote reiterated his message to employees that he would not negotiate with the Union. Barrett testified that at the meeting, Buonanote told employees that "everything the Union had to do they had to do through him and they had to negotiate with him." Barrett further testified that Buonanote explained to employees that there was no money for raises so the
 10 Union could not assist them with any wage increases. Barrett also testified that Buonanote told the employees that "there was nothing else that they [the Union] could change so basically the Union would not be helpful to anybody there." Barrett also testified that Buonanote told the employees that if the Union won the election, "the only thing that they could do was to strike", and that they "did not want to go on a strike." Buonanote also asked employees why they
 15 wanted a Union. In response to Buonanote's inquiry, the employees, including Dale and Mazzuco, asked him why he terminated Russo.⁵ Other employees asked about safety issues and other grievances that they have with Respondent.

Dale attended the February 10 meeting, testified that Buonanote discussed the
 20 information that he had obtained on the internet about union salaries, and that Buonanote told the employees that they were making the national average of what union employees were making. Dale testified that she challenged the information provided by Buonanote by stating that the national average was not indicative of what employees would be making in New York. At this meeting, Director O'Connor also told employees that an existing Steering Committee
 25 may represent the best way to address their grievances, and that the Steering Committee may work to "brainstorm and come up with ideas of running Crossing more efficiently."

Secretary Gouge also attended the February 10 meeting. Gouge testified that Buonanote asked employees why they wanted to bring a union to Respondent. He told the
 30 employees that Respondent was no place for a union. Gouge testified that Buonanote told the employees that an existing Steering Committee could help employees' with their grievances. It is undisputed that at the time, the Islip Terrace employees had never participated in the existing Steering Committee. Gouge also testified that Buonanote told the employees that he would never negotiate with the Union and that if the employees brought the Union in, the employees
 35 would have to strike because he would never negotiate.

Secretary Mazzuco testified that during the February 10 meeting, Kenney told the employees that Respondent was no place for a Union and that they, as counselors, were able to
 40 speak for themselves, without a Union. Mazzuco testified that Kenney asked the employees for their grievances and told them that all they needed to do was to talk about their grievances with Buonanote, and everything would be taken care of.

During cross examination, Mazzuco testified that Buonanote told employees that there will be negotiations and that he did not have to agree to what the Union asked for. Mazzuco
 45 also testified that Buonanote told the employees that he would not negotiate with the Union and that if he did not agree to any terms the only choice they would have was to strike.

Secretary DiFolco, who attended the February 10 meeting and testified that:

⁵ As set forth above Russo did not file an unfair labor practice charge.

"As the meeting proceeded, several times during the meeting, he said that he would never –he would not negotiate with the Union...he [Buonanote] said that it was his business, and there was –he had the final word. And, under no circumstances would he negotiate."

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A day or so after the February 10 meeting, Respondent's supervisor O'Connor held another meeting with employees. Director Kenney, Office Manager Hyde and Supervisor Barrett were present. The following employees were present: John Carlsen, Joanne Macken, Christina Mazzuco and Andrea DiFolco. Barrett credibly testified the meeting began by O'Connor informing employees that they should come and talk to her if they felt uncomfortable talking to Buonanote. Barrett testified that O'Connor told the employees that if the Union came in "things would never be the same, that people would have to start to have to punch a clock and would not be able to have the same relaxed atmosphere that [employees] had now." Barrett also testified that O'Connor's response to the concerns raised by employees, was to tell them that "the bottom line was that Frank [Buonanote] was in charge and whatever he said went, whether there's a union there or not, and they had to listen to him."

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On or about February 11, Buonanote spoke to Macken again about unions. During this conversation with Macken, Buonanote also reiterated that he would not bargain with the Union, and that if the Union came in they would have to strike and that in the event of a strike someone would replace her and the replacement wouldn't have to leave. Buonanote further explained to Macken, that if she had to cross the picket line, it would not be good for her clients.

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On or about February 11, Gouge testified that Buonanote asked her about the Union. Gouge testified that Buonanote asked her if she had given any thought to the Union. Gouge replied that she had no information about it. Buonanote told her that he "will let [Gouge] know that if [employees] vote in a union on March 9th [Buonanote will make sure [the employees] strike." Buonanote also told her, "I know your concern is money." Gouge asked Buonanote what her options were if the employees went on strike. Buonanote replied that she would have to cross the picket line risking the Union's violence. Gouge told him that she was not ready to make a decision regarding the Union because she did not have sufficient information. At the end of the conversation, Buonanote told her "look all I can urge you is if you want to be safe, I can urge you to vote 'no' for the Union."

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On February 12, Gouge testified that when she arrived to work at 4:30 p.m., Buonanote was already at the Islip Terrace facility. Both Gouge and DiFolco testified that Buonanote asked them if they had made a decision about what their vote was going to be for the Union. Gouge and DiFolco told Buonanote that they did not know how they were going to vote. Buonanote then stated that he would never negotiate with the Union, that he would not allow a Union in and that he was concerned about the employees. Buonanote offered to work with them without a union.

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On February 12, Buonanote learned that there was a meeting scheduled that day by the Union to meet with employees at the Oconee Diner. That evening, the following individuals were present at the Oconee Diner: Union organizer George Giovinco, LPN Dale, office manager Hyde, secretaries Mazzuco, DiFolco and Gouge and counselor Macken. It is undisputed that shortly after the Union began the meeting at about 8:00 p.m., Navas and Buonanote's mother, Mary Buonanote, entered the Oconee Diner and sat across from the table where employees were meeting. Navas and Buonanote's mother remained seated at their table for about an hour while the employees met with the Union. During the course of the meeting, secretary Gouge testified that she went outside the diner to have a cigarette. At the time,

Gouge saw that Buonanote was sitting in his car by himself in front of the diner.

On February 13, Buonanote and Navas confronted office manager Hyde, about her attendance at the February 12 Union meeting. Hyde testified that Buonanote asked what she was doing at the meeting. She told him that she was there to get information about the Union for the secretaries and for herself, Buonanote asked Hyde if she knew how the secretaries were going to vote. Hyde responded that she did not know. At that time, Buonanote told Hyde to "go out there" and "tell the secretaries to vote no and to tell them that if the Union came in, it was inevitable that they would go on strike because he would not negotiate." Buonanote also instructed Hyde to tell the counselors that they would be replaced with certified social workers, if there was a strike. Hyde testified that she delivered Buonanote's message to secretaries Mazzuco, Gouge and DiFolco.

On March 2, Buonanote held a meeting with the secretaries. Director Kenney was also present at the meeting. Gouge testified that Buonanote began the meeting by asking her if it was true that she had volunteered to be the Union's observer. Gouge told him that she did not volunteer, that she was elected. Buonanote told her that she did not need to be the observer. DiFolco corroborated Gouge's testimony.

On March 5, Buonanote again asked DiFolco and Gouge if they had decided how they were going to vote in the election. Gouge testified that she told Buonanote that she felt that employees were "damned" if they voted for the Union, and "damned" if they did not vote, because either way, he was going to terminate their employment. When Buonanote asked why Gouge believed that the employees would be terminated, she responded as follows:

"Because your behavior has been so erratic lately that your moods don't equate to what you are telling us. Your moods are telling us one thing and your words are telling us something else".

During this conversation with the secretaries, Buonanote also told them that if the Union was elected "he would go by the book with breaks and dress codes." Gouge testified that when Buonanote said this, he looked at secretary Mazzuco who was wearing jeans. Buonanote told Gouge that if the Union came in she would be written up because she was wearing jeans. Gouge also testified that Buonanote also told the secretaries that if the Union was elected, he would install a time clock and that the employees would not be allowed to go across to the deli or go outside to have a cigarette break, and that he would account for every minute of their work day. DiFolco corroborated Gouge's testimony that during this meeting, adding that Director Kenney, who was also present, told the employees that "this is no place for a union."

Secretary Mazzuco, who also attended the March 5 meeting, corroborated Gouge and DiFolco's about Buonanote telling the employees that if the Union was elected, their working conditions would change by installing a clock and having to account for every single break of time. Mazzuco also recalled Buonanote telling them how it was his father's business and that he did not want anybody ruining it or taking it away. During this meeting, he showed the employees a sample ballot and told them to vote 'no', while he said "let's just move on from this and move into our new building and put this past us."

On March 5, the Friday before the election, Buonanote held a "disaster plan" meeting. Directors Kenney and Cabral, office manager Hyde, Navas and manager O'Connor were present. All of the secretaries attended the meeting. Counselor Joan Macken was among the employees who attended the meeting.

Gouge testified that Buonanote began the meeting by urging the employees to vote ‘no’ for the Union; that he told the employees that in the event that the Union was voted in, he had come up with a “disaster plan.” He wrote on a board “disaster plan.” The plan on the board described how the employees would be replaced in the event of a strike. Gouge testified that, among the names written on the board, were the secretaries’ names, the counselors’ names and Hyde’s name. Buonanote explained to the employees how they were also replaceable. Gouge asked Buonanote what did he mean by replaceable and if he meant temporary or permanent replacement? Buonanote responded that it meant that they could not get their jobs back until the person that replaced them either left the job or was fired. Regarding the “disaster plan”, DiFolco testified that Buonanote discussed it as follows:

He [Buonanote] was explaining to us, because he said that he was a businessman, and he ran the company, and he had to have a back-up plan for what he would do with the Union. If we had to go on strike... Because as far as he saw it, the Union was never going to come in. So, there would be a strike. So, he had to make up a plan of what to do when everyone went on strike.

Secretary Mazzuco testified that Buonanote began the “disaster plan” meeting by telling the employees that there were only a couple of days left before the election and he just wanted to let them know that “he can replace” all of them in the event of a strike. Buonanote explained to the employees that he had help from other facilities.

Counselor Macken testified that Buonanote wrote all of the employees’ names on the board and explained to them how they were going to be replaced in the event of a strike. She testified that Buonanote explained that if Gouge went on strike, two employees from the Patchogue facility could do her job.

On March 9, the day of the election, Buonanote was at the Islip Terrace facility with Navas, his family, Respondent’s attorney, and some of Respondent’s Directors. Counselor Macken credibly testified that Buonanote came into her office, “slammed the door shut”, and asked her if she had a problem with him? Macken told him that she did have a problem with individuals who come into her office, slam the door and do not say hello. In response, Buonanote asked her “Do you think the Union is going to solve that problem?” Buonanote also asked Macken if that was the reason why she was voting for the Union. Macken told him that he was not supposed to ask the employees how they were going to vote. She stated that the Board’s notice stated that it was illegal. Buonanote then “stormed” out of the office.

During the election LPN Dale, as set forth below, who had been fired by Respondent, as set forth below, came to vote because she was on the eligibility list. It is undisputed that when she walked into Respondent’s facility to vote, Buonanote screamed at her to “get out” and as she continued to enter the voting area Buonanote screamed, “Fuck you.”

Supervisor Barrett testified that she heard a commotion and heard Buonanote screaming and yelling “fuck you” to Dale. Specifically, supervisor Barrett testified that:

“...there was a lot of yelling going on so I started to just talk to the girl [secretary DiFolco] at the desk, she’s 19 years old and she was getting all shaken up so I was consoling her and concerned about the adolescents coming in at the same time because they were listening to all the shouting.”

The Discharged Supervisors

It is undisputed that JoAnn Barrett, Evelyn Cabral and Katheline Hyde, whose terminations alleged in the Complaint, are supervisors under Section 2(11) of the Act.

JoAnn Barrett, Senior Counselor:

JoAnn Barrett began to work for Respondent as a managed care coordinator in April 2003. After the Union began its campaign, in January 2004, Barrett was promoted to senior counselor, a supervisory position. As a senior counselor, she handled the case management of patients, and supervised about five counselors. She reported to Directors Logan and Kenney, and to Managed Care Coordinator Cabral.

In November 2003, when the Union began its campaign, Barrett attended the first Union meeting held at Russo's house. At the meeting, she signed an authorization card. At that time, Barrett was not a supervisor. The meeting at Russo's house was the only Union meeting attended by Barrett. There is no evidence to show that Respondent knew that Barrett had signed an authorization card prior to becoming a supervisor or before her discharge.

In January, Buonanote first talked to Barrett, who had become a supervisor, about the Union during a managerial meeting. Buonanote, Director Kenney and Barrett were the only individuals present during this meeting. It is undisputed that during this managerial meeting, Director Kenney and Barrett showed their support to Buonanote. Barrett credibly testified that both Kenney and she told Buonanote that they did not think that a Union would work in a counseling facility. Kenney and Barrett also cautioned Buonanote "not to take it personally" and that the employees "were good people", and that everything would work out okay.

Barrett testified that she explained to Buonanote that the counselors were all professionals bound by ethics, that the Union would not be helpful at Respondent, and that she would share her opinion with the counselors. Barrett also testified that she did not say anything that would leave Buonanote with the impression that she was pro-Union.

A couple of days after Buonanote's first meeting with the employees, Buonanote approached Barrett and questioned her loyalty towards Respondent. Barrett testified that this was the first time that Buonanote questioned her loyalty. Barrett testified that Buonanote told her that he was concerned about her "lack of response" during the February 10 meeting. Buonanote also told her that she was not "backing him up as far as talking in the meeting." Barrett explained to Buonanote that she was not feeling well at the meeting.

In March, during the week of the election, Buonanote again questioned Barrett's loyalty towards Respondent. He accused Barrett of trying to vote during the representation election. Barrett testified that she had no idea what Buonanote was referring to, and that he did not explain to her where his accusation was coming from. Barrett explained to Buonanote that she was not looking to vote for the Union. There is no evidence to show that Barrett, after becoming a supervisor, was seeking to vote in the election. Her only Union activity was signing a Union card while she was an employee, had occurred in November 2003, more than three months before this conversation.

During the meeting, Buonanote warned Barrett, "you're either with us or you're against us" and told her that he needed to know where she was standing. Barrett reassured Buonanote and told him that she was with Respondent. Barrett also reminded Buonanote how she had excelled in her position even though she had been left to run the office without training.

At this point in the conversation, Barrett testified that Kenney and Navas had joined the meeting. Barrett testified that Buonanote told her that he was not questioning her clinical abilities, that he just wanted to know about her loyalties, and he needed to know “if [Barrett] will back him up in talking to people about not having the Union come into the office.” In response, Barrett told Buonanote that she was not going to intimidate employees or force her opinion on them.

When questioned at the trial of this case, why she thought that Buonanote was asking her to intimidate the employees, Barrett testified:

“He [Buonanote] was there all the time. He was over people’s shoulders, he was sitting down at their desks, he was constantly bringing up the Union, he was constantly asking people what they thought about the Union, why did they want a union, what was going on there, not offering any solutions, it was just, we don’t need a union around here, don’t want to have a union...”

Barrett further testified that she was supportive of Respondent’s business, and she did not think that the employees needed a Union. To this extent, Barrett testified that:

“If people were just affirmed, all this would have dropped. And everything was just, just don’t vote for the Union, whatever you do, just don’t vote for the Union, he [Buonanote] wasn’t hearing any of the concerns of the people that were attending the meeting.”

On March 10, one day after the election, Barrett reported to work at 10:30 a.m. She was scheduled to begin work at 11:00 a.m. Prior to her arrival, Buonanote had already discharged Office Manager Hyde and secretary Mazzuco. Barrett testified that when she first saw Buonanote, he was in the main office with Navas, O’Connor and other individuals employed by Respondent at other facilities. Barrett testified that when she began to take off her coat, Buonanote told her “you don’t need to take off your coat, you’re not working here anymore.” Barrett asked Buonanote why he was firing her. Buonanote responded that she was not “the type of management we want around here.” Barrett, who had been promoted to Senior Counselor only two months prior to her termination, had no prior disciplinary record. She never received any verbal or written warning indicating any problems with her job performance or with her employment.

During the trial, Respondent did not seek to explain why Barrett was terminated one day after the election. Other than alleging that Barrett is not protected under the Act because she is a supervisor under Section 2(11) of the Act, Respondent never provided a reason for her discharge. Buonanote, Navas and Kenney testified on behalf of Respondent. None of them offered any explanation for the discharge of supervisor counselor Barrett.

Evelyn Cabral, Director of Managed Care:

Director Cabral, a supervisor under Section 2(11) of the Act, worked for Respondent for about eight years. On March 10, one day after the election, Respondent also terminated her employment. At the time of her discharge, Cabral was the Director of Managed Care. She reported directly to Buonanote and to executive director O’Connor. As the Director of Managed Care, she oversaw all of Respondent’s facilities in Nassau and Suffolk counties. She also supervised all of the managed care coordinators. She traveled on a regular basis to Respondent’s five sites to supervise the managed care coordinators. However, it is undisputed that Cabral worked out of the Islip Terrace facility. Cabral testified that she did not have any

particular desk assigned to her at the Islip Terrace facility.

5 Cabral first learned about the Union when she received the representation Petition faxed to Respondent at its Islip Terrace facility. She handed the fax to Director Logan. Shortly after she received the Petition, she saw Buonanote in the Patchogue facility. No one else was present during this conversation. Cabral testified that Buonanote asked her if the fax was the first time that she heard about the Union. Cabral responded that was it was the first time that she had heard anything about the Union. During this conversation, Buonanote told Cabral that “a union would destroy the company and that he would never give in to their demands.”

10 A couple of days after Cabral’s initial conversation with Buonanote, he approached her again at the Patchogue facility to ask her about the Union’s campaign. Cabral testified that Buonanote told her that he found it hard to believe that she did not know anything about the Union. Cabral told him that everyone was quiet and that “everything was hush, hush...”

15 Shortly after Buonanote’s second inquiry, Buonanote asked Cabral to talk to the employees at Islip Terrace to “sway them” from the Union and to explain to them “how it could be detrimental to the patients if anybody ever decided to strike and they had to cross a picket line.”

20 On or about March 5, the Friday before the election, Cabral attended “the disaster plan” meeting, where Buonanote explained to employees why they would need to strike if the Union came in. Cabral testified how Buonanote drew a diagram on a board explaining to the employees who would be replaced and how employees would be replaced in the event of a strike. Cabral testified that Buonanote told the employees that if the Union was elected, he would not give into the Union’s demands, and that they would have to strike.

25 On March 10, one day after the election, Cabral reported to work at about 8:15 a.m. At about 9:00 a.m., Buonanote arrived to the Islip Terrace facility with Manager O’Connor and other individuals employed by Respondent at other facilities. A short time after his arrival, Buonanote told Cabral she was discharged. Cabral testified that Buonanote began the termination meeting by just telling her “there’s nothing that you can do to change my mind, you are fired.” When Cabral replied that she had not done anything wrong, Buonanote just asked her for the keys to the office. There is no evidence to show that Cabral engaged in any Union activity or to show that Cabral did not support Respondent during the Union’s campaign.

30 After 8 years of employment, and various promotions, it is undisputed that Respondent never informed Cabral why she was terminated. Cabral testified that she never received any written or verbal warning from Respondent about any matters.

40 In it’s defense, Respondent presented Christie McKelvin, manager Navas, and Buonanote to establish that Cabral was terminated on March 10, 2004, one day after the election, because in January, she was seen throwing pins at a picture of Buonanote at Respondent’s Brentwood, and using vulgar language directed at Buonanote. Cabral testified that she did not know McKelvin and that she never worked in the sober home in Brentwood.

45 McKelvin testified that Cabral was one of the individuals shooting pins at Buonanote’s picture. McKelvin further testified that supervisor Cabral was using “vulgar” language, such as “mother fucker”, to describe Buonanote.

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Katheline Hyde, Office Manager:

Hyde began to work for Respondent on March 10, 2003. She was promoted to the office manager position in June 2003. Hyde supervised the three secretaries employed at the Islip Terrace facility, Mazzuco, Gouge and DiFolco. She worked in the front office with the secretaries. She reported to Navas, and to Directors Logan and Kenney.

Hyde first learned about the Union's campaign from former employee Russo. She did not attend the first Union meeting at Russo's house. The day after the first Union meeting, Heather Dale, an employee, spoke to Hyde about the Union and asked her to sign an authorization card to allow the Union to come in. Hyde signed the card on or about early November 2002, and returned it to Dale. Hyde testified that no one saw her signing the card. Hyde testified that during the managerial meetings held by Respondent and its attorney, she did not disclose that she had signed a card or that she knew that Dale was involved with the campaign.

In early January, during the first managerial meeting with Respondent's attorney, Hyde learned that she was not eligible to vote. Hyde testified she attended the second Union meeting held on February 12, at the Oconee Diner. Hyde testified that the secretaries invited her to the meeting. She further testified that the secretaries asked her to come to the meeting to give them her opinion about the Union and to see if the Union was being truthful with them. The secretaries corroborated that they invited Hyde to the meeting to give them their opinion about the Union because they trusted her. Hyde did not tell any other representative of Respondent that she was attending the meeting. Hyde testified that there was no information given to the employees, and that no one ever informed her that she could not attend a Union meeting. As set forth above, Navas and Buonanote's mother went into the diner and witnessed who attended.

The next day, February 13, at about 10:00 a.m., Navas called Hyde to a meeting to confront her about her attendance at the Union meeting. Buonanote and Kenney were also present. During the meeting, Hyde explained to Buonanote that she attended the Union meeting to get information about the Union. She also told Buonanote that she attended the meeting in support of the secretaries.

Hyde credibly testified that Navas asked her what she was doing at the Union meeting the night before. Navas told her that she was disappointed at her. Hyde admitted that both Navas and she got into a heated exchange. According to Hyde, at that point, Buonanote asked her to calm down and to sit down. Hyde credibly denied that she got up from the chair to strike manager Navas or that she clenched her fist, as alleged by Respondent.

During this meeting, Buonanote asked Hyde if she knew how the secretaries were going to vote. Hyde told him that she did not know. Then Buonanote instructed Hyde to tell the secretaries that if they voted the Union in, a strike was "inevitable" because he would not negotiate with the Union. Hyde testified that the meeting ended with her apologizing for making a poor judgment. Hyde was able to return to work. She continued to work for Respondent until March 10, without any further mention of her attendance at the Union meeting.

Immediately after the meeting, Mazzuco testified that she heard some of what was said. Hyde told the secretaries that she could not continue discussing the Union's campaign with them. Hyde also testified that she delivered Buonanote's message to secretary Mazzuco, Gouge and DiFolco, that if the Union came in, a strike was "inevitable" because he would not negotiate with the Union.

On March 8 or 9, Hyde credibly testified that Buonanote called her into a meeting and told her that he felt that if she could vote, she would vote in favor of the Union. Hyde testified Buonanote told her that he observed her demeanor during his “disaster plan” meeting and that she appeared upset. Hyde testified that Buonanote knew that she was unhappy with what he did during the “disaster plan” meeting. During this conversation, Buonanote again asked her if she knew how the secretaries were going to vote. Hyde said that she did not know. Buonanote told Hyde that:

“The girls [the secretaries] would listen to me and that he wanted [Hyde] to go out and speak to the girls and have them vote ‘no’. *And he would know by the turnout if [Hyde] did what [Hyde] was supposed to do.*” (Emphasis added).

On March 9, the day of the election, Buonanote asked Hyde if she had talked to the secretaries. Hyde told him that she had no idea how the secretaries were going to vote. Buonanote did not say anything to Hyde.

On March 10, when Hyde reported to work, she was terminated by Buonanote. Hyde testified that Buonanote told her “I guess you know I’m letting you go.” Hyde was never told why she was terminated. Prior to February 12, when she attended a Union meeting, she had never received an oral or written warning about her job performance or her conduct.

The Discharged Employees

Heather Dale, LPN:

Dale worked as a regular part-time LPN and a counselor from February 2001, to February 19, 2004, when she was terminated by Buonanote. She was supervised by Directors Logan and Kenney. Barrett supervised her work as a counselor.

Dale and former employee Russo were the individuals who initially contacted the Union. Dale solicited cards, spoke to employees about joining the Union and arranged the various meetings held by the Union with the employees.

On or about February 10, the day of Respondent’s first meeting with the employees, Dale was interrogated by Buonanote about her sympathies and support for the Union. During that interrogation, Dale made it clear to Buonanote that she thought the employees needed a collective bargaining representative who would negotiate with Respondent about their safety concerns, employment benefits and job security.

On Thursday, February 12, office manager Hyde handed Dale a memo dated February 11, prepared by Buonanote informing the employees that “only those counselors and clerical employees presently employed at the Islip Terrace office and on the Islip Terrace payroll will be eligible to vote.” Dale testified that the same day she received the memo, she spoke to Director Kenney and Buonanote about the information contained in the memo.

A week before receiving that memo, Director Kenney had informed Dale that her payroll was going to be switched to the Port Jefferson office for budgetary reasons. At that time, Dale did not question her payroll transfer because she did not believe that it would change her eligibility to vote in the election. In early February, when Dale was assigned to do medical screening at the Port Jefferson facility and other facilities, she was still assigned to work two days per week at the Islip Terrace facility and she remained working out of the Islip Terrace facility until her discharge on February 19.

Notwithstanding her initial understanding, when she read Buonanote's memo, she was convinced that her payroll transfer was an attempt to keep her from voting in the election.⁶ Dale testified that at the time that she read the memo, she had no knowledge of the Regional determination that she was ineligible to vote. The Decision and Direction of Election was issued on February 10, and it is undisputed that Dale did not see the Decision until after her February 12 meeting with Buonanote.

On February 12, when she read the memo, she decided to confront Director Kenney about what she believed was an attempt to keep her from voting in the election. Dale admitted that at the time, she was upset with Kenney, because she believed that he lied to her. Dale testified that she began the meeting by telling Kenney that after reading the memo, she was convinced that the transfer was to keep her from voting in the election. When she confronted Kenney, Dale testified that she told him that the payroll transfer was "budgetary bullshit." Dale testified that she had a close working relationship with Kenney. She also told Kenney that their attempt to block her vote was illegal.

The same day, in the afternoon, Dale met with Buonanote in her office to discuss the February 12 memo. At that time, Kenney had already reported her conduct to Buonanote as insubordinate. No one else was present. Kenney was not in the facility. Dale credibly testified that Buonanote began the meeting by asking her what her problem was with the memo. Dale explained to Buonanote why she was upset. Buonanote reiterated that the payroll transfer was for budgetary reasons. Dale testified that she told Buonanote that he was lying about the reasons for her payroll transfer. During this meeting, Buonanote again asked Dale why the employees wanted a union. Dale testified that she responded that the employees needed a union to negotiate for them about their employment benefits. Dale testified that Buonanote became agitated when she mentioned the various charges by the Union against Respondent. Dale told Buonanote that the charges showed that he was threatening and harassing employees. She referred, in part, to his shredding of documents sent by the Union. According to Dale, most of the conversation was calm until she told Buonanote that he was threatening and harassing employees. After she said this, Buonanote "stormed" out of the office and began yelling at some of the secretaries, asking if he was threatening or harassing anyone. Dale testified that secretary DiFolco and manager Hyde were among the individuals that were present when Buonanote was yelling that he had not threatened anyone. According to Dale, the meeting ended when Buonanote's brother kept him out of the office.

Secretary DiFolco corroborated Dale's testimony. She testified that on February 12, the day of the Union meeting at the Oconee Diner,⁷ she came to the office at about 4:00 p.m. DiFolco testified that she was standing in the office, when she heard Dale tell Buonanote "you are intimidating-you're going around questioning people, and you're trying to intimidate them by doing this..." According to DiFolco, Buonanote "stormed" out of the office where he was meeting with Dale, to ask the secretaries if he was intimidating them. DiFolco did not respond.

The next day, on February 13, Dale testified that she was in the Patchogue office when Buonanote showed her a copy of the Decision and Direction of Election. Buonanote told her that pursuant to the Decision, she was not eligible to vote because LPNs were not part of the Unit. Dale credibly testified that she apologized to Buonanote for jumping to conclusions and for believing that the transfer of her payroll records was an attempt to block her vote. It is

⁶ Respondent's decision to transfer her to the Port Jefferson facility is not alleged as an unfair labor practice.

⁷ Dale was one of the employees present at the Union meeting at the Oconee Diner.

undisputed that neither Buonanote nor Kenney, nor any other representative, ever issued any warning to Dale, oral or written, about her conduct on February 12.

5 The following Thursday, February 19, at about 2:00 p.m., Dale was terminated. The record establishes and is undisputed that Buonanote met with Dale in a room at Respondent's facility accompanied by five managers, who were not employed at the Islip Terrace facility, and managers Navas and O'Connor. Dale testified that Buonanote, Navas, and the five managers walked in to the office where she was working. They all sat down "surrounding" her. Buonanote told her "you are no longer an employee here, please leave the premises immediately." Dale testified that she asked Buonanote for some time to collect her belongings. As she was collecting her things, Buonanote said, "I said immediately." Dale replied "why don't you call the police?" She testified that she wanted to collect her things. During this termination meeting, Navas, in front of the front office employees, reported Dale to the police as a trespasser. Respondent never provided Dale with a reason for her termination. Prior to her discharge, Dale never received any oral or written warning about any matter regarding her job performance or about her conduct.

20 On March 9, the day of the election, Dale went to the Islip Terrace facility to vote under challenge even though she had been terminated. Dale testified that the Board Agent advised her to vote as a challenged voter in order to preserve her vote. Dale further stated that the Board Agent explained to her that the Union had appealed the Regional Determination. Dale went to vote accompanied her fiancé, Richard Pascarelli. When Dale went to the voting area, Pascarelli left Respondent's facility. DiFolco corroborated Dale's testimony that Pascarelli, after coming inside the office, immediately turned around and waited for Dale in the waiting area.

25 When Dale came in, Buonanote approached her and asked her "what the hell she was doing there?" Dale replied that she was there to vote. Buonanote told her to vote and to get out. After Dale voted, Buonanote approached her again and began yelling at her, "at the top of his lungs", "fuck you, fuck you, fuck you." At that time, Buonanote was right in her face. Dale reported the incident to the Board Agent conducting the election.

Supervisor Barrett testified that because of this commotion she had to comfort secretary DiFolco who was left shaken by Buonanote's conduct.

35 During cross-examination, Kenney testified that prior to February 12, he never had any problems with Dale at work or knew of any problems with Dale. He also testified that Dale continued to work until February 19 without any further incident of misconduct or insubordination. Kenney further admitted that prior to February 12, he had heard "many" employees using obscene language and that he did not know of any employee being warned for using obscene language. Kenney denied having any knowledge of why Dale was terminated.

45 The termination note, prepared by Buonanote detailed the alleged insubordination, as described by Dale in her conversation with Buonanote on February 12. Kenney admitted that he did not know of any situation where five or more employees were needed to discharge one employee.

50 On February 13, Buonanote testified that he met with Dale in the Patchogue facility and showed her the Decision and Direction of Election. According to Buonanote, Dale told him "Okay. Just as long as I know you weren't trying to block my vote" and "if that's the decision, that's the decision." During this meeting, Buonanote did not testify about any misconduct on Dale's part.

About a week after the February 12 incident, Buonanote testified that he made the determination to discharge Dale for the insubordination described above. He explained the basis of his decision as follows:

5 “I think she [Dale] was being insubordinate. She was yelling at me in front of the staff. And I felt that if my staff watched another staff member yelling at me, disrespecting me, being belligerent towards me, that it would set a bad example and it would kind of diminish my credibility among the staff. I need to keep some semblance of order. Particularly with staff behavior in order for me to make sure
10 that my business is running smoothly.”

Buonanote further testified that he needed five managers and Kenney and Navas to terminate Dale to have some witnesses, and because with these individuals Dale would be less inclined to be “belligerent.” Buonanote testified that he was not afraid that Dale would attack
15 him physically, but that he was more concerned with her “shooting her mouth off again.” Before terminating Dale, Buonanote called the police and asked them what procedures he needed to follow to terminate someone because he was afraid that she would not leave the premises. The police advised him to call 911 if Dale refused to leave. Buonanote claimed that when he terminated her he was still concerned that Dale would sabotage the building, so he asked her to
20 hurry up, when she refused, he immediately asked Navas to call the police.

Christina Mazzuco, Secretary:

Mazzuco worked as a secretary at the Islip Terrace facility from January 2002, until
25 March 10, 2004. She worked Monday through Friday from 8:00 a.m. until 5:00 p.m. She was responsible for pulling charts, taking care of clients at the window, data entry, handling clients’ money, and dealing with the correspondence. Hyde and Kenney supervised her.

She first learned about the Union when former employee Russo invited her to the first
30 Union meeting in November 2003. She signed an authorization card at the meeting. Mazzuco attended about three Union meetings. She attended the meeting on February 12, at the Ocone Diner, which, as set forth below, was surveilled by Navas and Buonanote’s mother. The next day, on February 13, she was in the front office, her work area, when she heard Navas talking to Hyde about the meeting in the Union meeting at the diner.

35 In February, Mazzuco testified that she attended the meeting held by Executive Director O’Connor. At this meeting, O’Connor informed them that Buonanote was on vacation and he has asked her to speak to them about the Union. Mazzuco credibly testified that she told O’Connor that she did not believe that it was right for Buonanote to search the employees’ in-
40 boxes, and it was wrong to intimidate the employees. She described Buonanote’s conduct to O’Connor as “nerve racking.” O’Connor told Mazzuco that she was going to communicate her comments to Buonanote.

On March 10, a day after the election, which the Union won, Mazzuco reported to work
45 at 8:30 a.m., as scheduled. Shortly after she began to work, Buonanote fired supervisor Cabral and office manager Hyde. Before she reported to work, Buonanote had terminated supervisor Barrett.

Mazzuco testified that after the discharges of Hyde and Cabral, she continued to work
50 filing the charts. While she was filing the charts, Buonanote asked her “If [Mazzuco] was happy with the way [Mazzuco] voted.” Mazzuco just continued to file. Buonanote again said “are you glad you voted yes? Because now look what happened.” At this point, Mazzuco credibly

testified that she ignored Buonanote's statement, turned her back, and continued working. Mazzuco admitted that she was visually upset about the discharge of Hyde and Cabral. Nonetheless, it is undisputed that she did not discuss the discharges with Buonanote or Navas.

5 Mazzuco credibly testified that after she turned her back and went back to work, Buonanote continued to walk behind her pacing back and forth, Just watching what she was doing. At that point, Buonanote told to her "to start looking for another job." Navas and employee Landser, employed at a different facility, were present at the time. Mazzuco continued to work, and Buonanote repeated "you know, really I suggest that you do start looking
10 for a new job." Mazzuco credibly testified that she turned around and asked Buonanote, "Do you want me to leave?" and he replied "no, just start looking for a new job." Mazzuco testified that "I took that as I was getting fired. I got up, went in the back, said good bye to my co-workers." Buonanote was standing by listening. Mazzuco testified that between the time that Buonanote told her "start looking for another job" and the time that she got up and said good
15 bye, she did not say anything else.

Mazzuco credibly testified that as she was exiting, she called Buonanote an "asshole." Navas asked her if she was quitting her job. Mazzuco replied, "Call it whatever you want." Navas then began to chase Mazzuco and began screaming at Mazzuco "get out, get out, get
20 out." Mazzuco credibly testified that Navas was within six inches from her face. Mazzuco began running backwards facing an angry Navas because she believed that Navas was going to physically assault her. One of Respondent's clients helped Mazzuco, and brought her downstairs, away from Navas. When questioned at the trial if she quit her job, Mazzuco testified she never quit her job.

25 Prior to her termination, Mazzuco never received any written or verbal warning from Respondent. Mazzuco testified that neither Buonanote nor Navas ever told her that they were dissatisfied with her work. Navas confirmed that prior to March 11, there was no problem with Mazzuco's job performance.

30 Lillian Gouge, Secretary:

Gouge testified that she first learned about the Union from former employee Russo and Dale. She attended the meeting in November at Russo's home, where she signed an
35 authorization card. On February 12, she also attended the second Union meeting held at the Ocone Diner with Mazzuco and DiFolco. Manager Hyde was present at the meeting when they first arrived. Navas and Buonanote's mother were at a separate table observing the Union meeting.

40 On February 13, at about 4:30 p.m., when Gouge reported to work, Navas was already in the Islip Terrace facility. Navas called Gouge to a meeting room number. No one else was present. Gouge credibly testified that Navas told her that she felt betrayed when she saw "all four of her girls sitting at the meeting the night before." Gouge replied that she was the one betrayed, considering that she was following them as criminals. Gouge also testified that Navas
45 informed her that she learned the day before about the meeting at the diner and that she needed "to go and see who of her girls were going to attend." Navas also told Gouge that she told Buonanote about the meeting at the diner. With regard to Hyde, Gouge told Navas that the secretaries invited manager Hyde because they wanted Hyde to learn more about the Union and what the Union was all about so that they could make an informed decision. Gouge told
50 Navas that the secretaries invited Hyde because they trusted her.

On March 2, during a meeting with other employees, Buonanote asked Gouge if she had

volunteered to be the Union's observer for the election. He also told her that she could back out of it. Gouge testified she told him that she would look into it. Gouge testified that she could not deal with Buonanote's pressure in the office and how she was going to vote. She testified that she was not in the state of mind to deal with the "harassment, the trauma, the intimidation..." At the March 2 meeting, Gouge told Buonanote that she was going to vote "no" for the Union. When asked by Respondent's Counsel, what did she understand as harassment and intimidation, Gouge credibly testified that:

"When he [Buonanote] told me if I knew what was good for me and I wanted to stay safe, vote 'no' for the Union...He told me if I crossed the picket line there could be violence by people outside...when he told me 'I urge you to vote 'no'. If you know what is good for you and you want to stay safe, vote 'no' on March 9."

Gouge also testified that Buonanote's constant slamming his fists on the employees' desks, raising his voice at the employees and telling them that they were replaceable, was very intimidating.

Gouge further testified that the very next day, after stating that she was going to vote "no" for the Union, Buonanote called her to thank her and told her that he did not know how he was going to repay her. Navas also called Gouge to thank her for her loyalty.

On March 8, Gouge credibly testified that she informed Kenney that she was going to be the Union's observer. In response, Kenney told her that she could still back out of it. He also asked her if he should notify Buonanote. Gouge asked him not to tell Buonanote because she was not ready to be screamed and yelled at. Gouge further testified that Kenney warned her that if she was going to be the observer, she should not challenge any votes. Gouge informed Kenney that she was planning to challenge Shari Wasmer, because she was a certified social worker and Karen Loviglio because she was not in the Islip Terrace payroll.

On March 9, Gouge served as the Union's observer. During the pre-election conference, Buonanote asked the Board Agent how many observers were needed. The Board Agent informed him that two, one for each side. Gouge credibly testified that Buonanote told her that he did not need her because he brought in his own observer. Gouge refused to leave because she wanted to make it "an honest and fair election", which is what the employees wanted when they elected her. As an observer, she was planning to challenge the two employees who she believed were ineligible to vote. Gouge acted as the observer and challenged two of Respondent's employees.

On Wednesday, March 10, the day after the election, Gouge reported to work at 4:30 p.m. None of her co-workers were there. Mazzuco and Hyde had already been fired. DiFolco was not in the office because she was not scheduled to work on Wednesdays.

Gouge testified that when she entered the office, executive director O'Connor, Navas and Buonanote were in her work area. Peter Landser, an employee from the Deer Park facility, was doing office manager Hyde's work. Gouge asked Landser where were all of her co-workers. He informed her that they were all terminated. Gouge further testified that when Buonanote first saw her, he asked her if she thought it was going to be easy coming in to work on that day. Gouge credibly testified that she replied "I didn't know it was going to be—I knew it wasn't going to be easy, but I wasn't going to allow you [Buonanote] to stop me from coming through that front door today." Buonanote responded "well, if you think this is rough, you have no idea of what you're in for."

Immediately after her exchange with Buonanote, Gouge testified that Navas approached Gouge and told her the following:

5 “How dare you put that Union pin on. How dare you represent the Union. When you put that pin on I knew who you were loyal to. And for you even to wear that Union pin, how dare you challenge anybody’s vote. How dare you.”

10 Gouge credibly testified that she said that she wanted the election to be fair. Buonanote interjected and told Gouge that if she thought that they were rough with her, “she had no idea what was in store for her.” That day, at about 6:40 p.m., Gouge testified that she asked for permission from Buonanote and Navas to go home before the end of her work day because she started to get chest pain and she was “hysterical crying.” It is undisputed that Buonanote and Navas had authorized her to leave early. Gouge testified that she never had the kind of physical reaction to stress before March 10.

15 On Thursday, March 11, Gouge credibly testified that she reported to work as scheduled. Gouge testified that she came in to work with DiFolco. She began to pull the charts, which was part of her regular work assignment. Navas stopped her from pulling the charts, and told her that Jason, an employee from another of Respondent’s facilities, was going to pull the charts. It is undisputed that pulling charts were part of the secretaries’ daily work assignment. Gouge testified that at that time, Buonanote approached DiFolco who was sitting in her work area, and asked her if she was the individual who opened the door to Dale the day of the election. Gouge testified that DiFolco told Buonanote that she did not open the door and that she was not even by the window at the time.

25 Gouge testified she heard Buonanote tell DiFolco that he did not believe her. At that point, he told Gouge and DiFolco that they “needed to be taught the rules all over again.” Gouge testified that it was then that she joined the conversation between Buonanote and DiFolco.

30 Gouge told Buonanote that they knew the rules. Buonanote told her that he did not care what she thought and told her to “shut up.” Gouge admitted that she refused to shut her mouth because DiFolco and her “were human beings and (Buonanote) was not treating them as human beings. Gouge further testified that she told Buonanote that she was going to stand up for herself. Gouge told Buonanote and Navas, “I am not a dog, and I will not be ordered around like a dog.”

35

Gouge credibly testified that Buonanote also told her:

40 Part of the Executive Office Manager’s duties [referring to Navas] are to order you around like a dog and you will obey like a dog like starting tomorrow night when you come in to report to work. You and Andrea [DiFolco] will be made to get on your hands and knees and *get under the desk and clean the dirt out.* (Emphasis)

45 Gouge insisted that she would not get on her hands and knees for anyone. Gouge credibly testified that the situation worsened at this point. Gouge testified that when the discussion began at about 5:20 p.m., there were not clients waiting in the reception room, where Buonanote was standing. At about 5:55 p.m., when the situation had worsened, there were clients in the waiting area. Buonanote, Navas and Gouge were screaming at each other. She testified that she did not begin to scream back at Buonanote until he told her that he was going to make them get on their hands and knees like dogs to clean the dirt from under their desk.

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When Buonanote asked her to lower her voice, Gouge told him why he was allowed to scream at them and then asked her to remain quiet. At that point, Gouge testified that Buonanote, who was initially standing in the waiting area, (at the window where the secretaries sit), moved from the window and stood at the exit door. Gouge testified that he was standing in the doorway, and he told her to “get out” because she refused to shut her mouth. Gouge asked him, “Are you firing me?” Buonanote replied “get out.” At this point, Gouge testified Buonanote was screaming, “spitting as he’s screaming” and “the veins were bulging out of his neck.”

Gouge told Buonanote “unless you terminate me, I’m not leaving.” It was then that Buonanote said to Navas, “Document this. As of 6:00 p.m., March 11 Lillian Gouge is no longer being paid by Crossing Recovery Center.”

As Gouge was leaving, Navas and Buonanote came to her face and continued to scream at her to get out. Gouge testified that when she got to the doorway, where Buonanote was standing, he took the right side of his body and physically “rammed” Gouge on the left side. Gouge testified Buonanote was actually blocking the exit door of the office. Navas intervened and pushed him away.

Gouge testified that as she was exiting, Buonanote also said “and Andrea (DiFolco), get out with her.” Gouge left the facility with DiFolco.

Prior to her termination, she had never received any written or verbal warning regarding her work performance or her conduct at work.

Andrea DiFolco, Secretary:

DiFolco worked as a secretary from June 2003, until March 10, 2004. She covered the 3:00 p.m. to 8:30 p.m. shift with secretary Gouge. She was not scheduled to work on Wednesdays because she attended school.

DiFolco learned about the Union’s campaign, from former employee Russo. In November 2003, she attended the meeting at Russo’s home and signed an authorization card. She attended about three meetings held by the Union before the March 9 election. She was present at the second Union meeting at the Oconee Diner.

DiFolco testified that during the election she did not open the door to Dale and her boyfriend as Respondent contends. She did observe Dale come in with her fiancé. DiFolco testified that Mazzuco and office manager Hyde left the office to avoid making a decision. When DiFolco turned around, Buonanote’s brother had opened the door for Dale and Pascarelli.

DiFolco testified that she witnessed when Buonanote told Dale, “Fuck you.” DiFolco testified that he said it, “at the top of his lungs, pointing, crazy...” DiFolco testified that she was about five feet from the incident, and she saw it while standing in the window in her office.

Supervisor Barrett testified that after this incident, she had to calm DiFolco who was shaken and upset because of Buonanote’s conduct towards Dale. Specifically, supervisor Barrett testified that:

“...there was a lot of yelling going on so I started to just talk to the girl [secretary DiFolco] at the desk, she’s 19 years old and she was getting all shaken up so I was consoling her and concerned about the adolescents [the clients] coming in

at the same time because they were listening to all the shouting.”

On Thursday, March 11, DiFolco was scheduled to begin work at 3:30 p.m. However, she reported to work at 4:00 p.m., with Gouge. It is undisputed that DiFolco informed Director Kenney that she was coming in to work an hour late because she was “stuck at school” and that he told her that it was okay. Prior to March 11, she had never being late before. DiFolco was never warned, verbally or in writing, for work performance or conduct. Hyde, who had already been discharged, testified that she gave DiFolco a ride to work and waited outside for about an hour because the employees did not know what was going to happen.

DiFolco credibly testified that when Gouge and she began to pull the charts, as they usually did, Navas asked Gouge what she was waiting for. When Gouge explained what she was doing, Navas told her that “from that day on”, she, Navas, was going to tell Gouge what to do. Navas also asked DiFolco why she was late. When DiFolco explained that she had called Kenney, Navas told her that in the future, she would need to report to her first and that her 15 minute break was over. Prior to March 11, DiFolco testified that was never any break rules enforced and no one ever told the secretaries that they have a fifteen minutes break.

When DiFolco returned to her work area in the front office, she testified that she continued to work without talking to Gouge. DiFolco credibly testified that Buonanote approached her and asked her if it was safe to assume that she was the one who let Dale and her boyfriend inside the office the day of the election. DiFolco told him that she did not let them in. Buonanote responded that maybe Gouge and her needed “to be taught the rules” of Respondent.

DiFolco corroborated Gouge’s testimony. Gouge then told Buonanote, “Is it safe to assume that you’re going to harass us every night because you can’t terminate us?” That’s when Buonanote told Gouge to shut her mouth. DiFolco testified that up until that point, they were both talking in a calm voice. Gouge raised her voice, when she told Buonanote that he was treating them like they had a disease. Buonanote “yelled” at Gouge to shut her mouth. DiFolco also testified that at the time there were clients in the waiting area in the hallway.

DiFolco testified that the atmosphere that day was “indescribable”, that she and Gouge were “literally afraid” to be in the office because they did not know what Buonanote was going to do. When questioned as to what was particularly threatening about the atmosphere, DiFolco testified that Buonanote had been harassing them “for months”, “questioning us, interrogating us”, constantly asking us how we were going to vote.

On March 11, Buonanote told Gouge and DiFolco that Navas was her new supervisor and that she needed to do whatever Navas told her to do. DiFolco and Buonanote were talking very loud. Gouge told Buonanote “You are not going to harass us here tonight.” DiFolco went over to Gouge who was standing by the door. When she walked to the door with Gouge, she heard when Buonanote said to Navas “Sarah, document from six o’clock Lillian [Gouge] is no longer paid by Crossings Recovery Center.”, and screaming at both Gouge and DiFolco to, “Get out, get out.” DiFolco credibly testified that “I thought that’s what he was telling me. He was telling me to get out. So, what - what am I – what am I supposed to do?” DiFolco testified that towards the end of the incident, Navas came between Gouge and Buonanote, when Buonanote was “within inches” of Gouge.

Credibility Resolutions

I credit all of General Counsel’s witnesses and discredit all of Respondent’s witnesses.

As to the demeanor of General Counsel's witnesses, it was clear to me that they were reliving what had happened as they were testifying. During various portions of their testimony almost all of General Counsel's witnesses broke down and wept. Their testimony was very detailed during direct and cross examination and they corroborated each other.

During all of General Counsel's witnesses' testimony I observed Buonanote's eyes glaring at them blazing with obvious hatred and his jaw muscles bulging. During their entire testimony this conduct continued with each witness. Buonanote impressed me as an angry man, one to be feared

On the other hand when Respondent's witnesses testified he was smiling at them, looking out the window, and totally relaxed.

Moreover, I found General Counsel's witnesses' testimony to be extremely detailed. Their testimony on cross examination was consistent with their direct testimony. I find that any inconsistencies were minor which would normally be expected in any truthful witness.

I did not find Buonanote's testimony credible given his demeanor, and his own admissions as to his anger during the Union campaign. I found Navas not to be a credible witness because of her "close personal relationship", and in part because she refused to describe this relationship, notwithstanding my questions put to her. I find Kenney totally unbelievable given his testimony that he never heard Buonanote yelling or cursing at employees at any time although Kenney was present at the Islip Terrace facility during the entire Union campaign as sole director of the facility.

Analysis and Conclusion

Respondent's Unlawful Anti-Union Campaign is Evident from the Record

The credible testimony of the employees and supervisors conclusively establishes that immediately after Respondent learned of the Union's campaign, Buonanote and senior manager Navas mounted a daily and unlawful campaign which consisted mainly of the following message: if the employees selected the Union as their collective bargaining representative, Buonanote would not negotiate with the Union; that a strike was "inevitable" if the Union came in; and that if the employees went on strike, Buonanote was prepared to replace each one of them.⁸

There was nothing "subtle" in Buonanote's message during employee meetings in February and March, and his disaster plan meeting when he told his employees that he would not negotiate with the Union, that the employees would strike and be replaced. Buonanote also conveyed this message on a one-on-one basis almost daily.

Prior to the first meeting, Buonanote met with the employees on one-to-one basis. LPN Dale credibly testified that before the meeting, Buonanote told her that he "would not go along

⁸ *Unifirst Corp.*, 335 NLRB 706 (2001), where the Board found that the employer violated Section 8(a)(1) of the Act when it told the employees that he would not negotiate and that a strike was inevitable. See also *Gold Kist, Inc.*, 341 NLRB No. 135 (2001), where the Board held that the employer violated Section 8(a)(1) by telling the employees that there will be a strike because he will not negotiate and that there will be violence if the voted for the Union.

with any negotiations, that the Union wasn't going to come in and tell him what to do and how to run his father's business."⁹ During the last meeting, the "disaster plan" meeting, Buonanote wrote the employees' names on the board and explained how they were all replaceable in the event of a strike. Again, Buonanote told the employees that if the Union came in, a strike was
 5 "inevitable." All of the employees who testified described in detail how this message was repeatedly conveyed to them before the election was held.¹⁰

This message was also accompanied by Buonanote's assertion that it was futile to bring the Union in because "there was nothing that the Union could do for them." I find this conduct
 10 violates Section 8(a)(1) of the Act.¹¹

In describing how a strike was "inevitable", Buonanote also told the employees that unions were violent, and that if there was a strike, the Union will assault them and their families. Buonanote told Gouge that if there were a strike, she would have to risk the Union's violent
 15 conduct. Buonanote also told DiFolco that the Union would come after her boyfriend and family. Buonanote made the same statement to Mazzuco and to counselor Macken. In this regard, Macken testified that she felt intimidated by Buonanote's statement because of how he described the Union and his unwillingness to negotiate with the Union. Gouge also credibly testified that Buonanote told her that if she wanted "to be safe" to vote "no" for the Union. I find
 20 conduct violates Section 8(a)(1) of the Act.¹²

In December, after the petition was filed, it is undisputed that Buonanote and senior manager Navas began to visit the Islip Terrace facility nearly every day. Counselor Macken also testified that "if Frank [Buonanote was] there, she's [Navas was] there." Supervisor Barrett,
 25 who worked five days a week, credibly testified that these individuals were never in the office "until we had word of the union." Supervisor Barrett also testified that during Buonanote's visits, "he was over people's shoulders, he was sitting down at their desks, and he was constantly bringing up the Union." I find these daily visits created the impression that the employees' union activities were under surveillance, in violation of the Act.¹³

In addition, during these daily visits, Buonanote and senior manager Navas began to search employee's in-boxes, messages, faxes and desks, and began to destroy any Union literature that they found. The employee's testimony about this conduct is uncontroverted. Respondent's contention was that the employees' in-boxes were only for business purposes.
 35 The employees testified that before the Union's campaign, they were allowed to use their in-boxes for non-business purposes, such as putting in personal notes and exchanging videos and

⁹ *Wellstream Corp.*, 313 NLRB 698, 706 (1994), where the Board held that the statements of an employer that it would see to it that its company was never unionized were clearly intended to, and had the effect of, conveying to employees the futility of their support for the union, violated Section 8(a)(1) of the Act

¹⁰ See *Unifirst Corp.*, *supra*.

¹¹ See, *Wellstream Corp.*, *supra*, where the Board held that it is a violation of Section 8(a)(1) of the Act to tell employees that it is futile to join the Union.

¹² See *Gold Kist, Inc.*, *supra*, it is a violation of Section 8(a)(1) of the Act to tell employees that there will be a strike and violence if they chose the Union.

¹³ An employer's statements to the employees that it knows about their organizing efforts, and the detailed comments about the extent of employees' union activities create the impression that the employees' union activities are under surveillance because they reasonably suggest to the employees that the employer is closely monitoring their organizing efforts. *United Charter Service*, 306 NLRB 150, 151 (1992); *Ichikoh Mfg.*, 312 NLRB 1022, 1023 (1993).

books. The coercive nature of these daily visits is evident from Mazzuco's testimony. Mazzuco told executive director O'Connor that the searching of the employees' in-boxes and messages, and the daily visits by Buonanote and Navas, were "nerve racking." I find by this conduct Respondent unlawfully confiscated employees' Union literature,¹⁴ engaged in surveillance of the employees' activities¹⁵ and subjected the employees to closer supervision,¹⁶ all in violation of Section 8(a)(1) of the Act.

I also find that during these daily visits, Buonanote, senior manager Navas and Director Kenney and Logan, coercively interrogated the employees about their sympathies for the Union by asking them how they were going to vote and why they wanted a Union. LPN Dale, counselor Macken and the three secretaries credibly testified how Buonanote approached each one of them, on more than one occasion, to ask them how they were going to vote. Moreover, Counselor Macken testified that the same day that the election was being conducted, Buonanote came to her office, "slammed the door shut," asked her if she had a problem with him and if that was the reason that she was going to vote for the Union.¹⁷ I find this conduct coercive and unlawful interrogation in violation of Section 8(a)(1).

The credible evidence establishes that during the individual and group meetings with the employees, Respondent solicited the employees' grievances in order to discourage them from selecting the Union as their collective bargaining representative. On February 10, during Respondent's first meeting with the employees, executive director O'Connor told the employees that an existing steering committee at Respondent's main office could serve as a means of addressing their grievances. It is undisputed that prior to the Union's campaign, the employees at the Islip Terrace facility were not represented at this Steering Committee. Secretary Mazzuco also testified that at this meeting, Director Kenney also told the employees that they did not need a union to talk for them. He said that all they needed to do was to talk about their grievances with Buonanote and everything would be taken care of.¹⁸ I find the solicitation of grievances a violation of Section 8(a)(1).

In addition, in its January 23 memo, I find Respondent coercively interrogated the

¹⁴ *Alle-Kiski Medical Center*, 339 NLRB No. 44 (2003), where the Board held that the confiscation of Union literature and an overly broad no-solicitation rule was in violation of Section 8(a)(1) of the Act.

¹⁵ *Eddyleon Chocolate Corp.*, 301 NLRB 887 (1991), where the Board found that the employer engaged in surveillance when the president of the company closely observed the distribution of Union literature.

¹⁶ *In re. Patagonia Bakery, Inc.*, 339 NLRB No. 74, where the Board held that the closer supervision of the employees because of their union activities amounted to harassment.

¹⁷ The questioning of these employees was not done in a casual manner. The scope and the manner of the questioning supports the view that the employees were not interrogated for a lawful purpose, but rather an attempt to solicit a reply regarding the employees' Union sympathies and their knowledge of other employees' Union activities. See *Rossmore House*, 269 NLRB 1176 (1984); *The Salvation Army Williams Memorial Residence*, 293 NLRB 944 (1987).

¹⁸ When an employer implements a new practice of soliciting employees' grievances during a union organizational campaign, "there is a compelling inference that he is implicitly promising to correct those inequities he discovers as a result of his inquiries and likewise urging his employees that the combined program of inquiry and correction will make union representation unnecessary." *Embassy Suites Resort*, 309 NLRB 1313, 1316 (1992), citing *Reliance Electric Co.*, 191 NLRB 44, 46 (1971).

employees and solicited their grievances. I find this conduct constitutes unlawful solicitation of grievances and unlawful promise to remedy their grievances if the employees did not select the Union as their representative in violation of Section 8(a)(1).¹⁹

5 The credible facts establish that in February, during a meeting held by executive director O'Connor and on March 2, during a meeting held by Buonanote with the secretaries, Respondent threatened to eliminate existing employment benefits and threatened to implement more stringent work rules by installing a time clock, instituting a new dress code, issuing warnings to the employees and instituting more onerous working conditions. Supervisor Barrett
10 credibly testified that O'Connor told the employees that if the Union came in, "things would never be the same, that people would have to punch a clock and would not be able to have the same relaxed atmosphere." Buonanote also told the employees that if the Union came in, they would not be able to wear jeans, they would be written up for wearing jeans and that he would install a time clock, and they would have to punch in and out for cigarette breaks. I find such
15 conduct violates Section 8(a)(1) of the Act.²⁰

 The uncontroverted evidence shows that Respondent surveilled the February 12 Union meeting at the Ocone Diner. Navas admitted that she was at the diner with Buonanote's mother. She did not explain why they went to the restaurant that night. Gouge credibly testified
20 that Navas told her that she knew about the meeting and that she went to the diner "to see" for herself who was going to be at the meeting. I find such conduct constitutes unlawful surveillance.²¹

 I also find Director Kenney's instructions to Gouge on March 8, to refrain from
25 challenging any employee during the election, and his statements urging her not to serve as an observer were also coercive in nature, in violation of Section 8(a)(1).

Supervisory Discharges

30 JoAnn Barrett

 Barrett had worked for Respondent as Senior Counselor from January 2004 to March 10, 2004, having been promoted from her position as a Managed Care Coordinator. In February 2004, Buonanote, held a meeting in which he spoke to members of the Islip Terrance staff regarding the formation of the Union. Buonanote later expressed concern with Barrett's
35 failure to support him during the meeting. A few days later, Buonanote reminded Barrett of her status as a part of the facility's management, and questioned her loyalty. Barrett responded that she supported management anti-union efforts. Barrett also expressed her opinion that a union wouldn't work at Respondent and volunteered to share this sentiment with anyone who asked
40 her. She gave no indication to Buonanote that she was pro-Union. However, she also informed Mr. Buonanote that she would not engage in any intimidating or illegal conduct to prevent a Union victory.

 Barrett testified that by early March, intimidation had become the core of Respondent's

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¹⁹ See *Be-Lo Stores, Inc.*, 318 NLRB 1, 3-4 (1995) the interrogation and solicitation of grievances in violation of Section 8(a)(1) of the Act.

²⁰ See *Be-Lo Stores*, 318 NLRB at 3-4 (1995)

50 ²¹ *Eddyleon Chocolate Corp.*, 301 NLRB 887 (1991), where the Board found that the employer engaged in surveillance when president of the company closely observed Union leafleting while speaking on the car.

antiunion campaign, and that Buonanote regularly interrogated employees and engaged in searches of their belongings in their presence. During the remainder of the campaign, neither Buonanote nor any other senior management representatives discussed the campaign with Barrett. When Barrett reported to work on March 10, the day after the election, Buonanote informed her of the termination of her employment, stating, "you are not the type of management we want around here." The evidence establishes that Barrett had a good work record prior to her firing and had no record of misconduct.

Evelyn Cabral

Prior to the termination of her employment on March 10, Cabral had worked for Respondent for about eight years. In April 2003, Buonanote promoted Cabral to the Director of Managed Care position. During the Union campaign, Buonanote asked Cabral what she knew about the Union's organizing efforts. She responded that she knew nothing and that "everything was hush-hush." Buonanote also asked Cabral to try to "sway" the employees' opinions, though he did not specifically instruct her to commit unfair labor practices. However, Cabral recalls attending a "disaster plan" meeting in which Buonanote expressed his desire that managerial employees carry forth his message that he would "refuse to negotiate with the Union," and that a strike was "inevitable."

On January 17, a Case manager observed Cabral throwing pens and clips at a picture of Buonanote hanging in the office of Respondent's West Hempstead facility. During the trial, Buonanote testified that this incident led to his decision to terminate Cabral's employment. However, neither Buonanote nor Cabral's client supervisor discussed the incident with her prior to the termination. On March 10, Buonanote simply fired Cabral, telling her that "there is nothing you can do to change my mind" and "you are fired." Cabral's supervisor Navas prepared a termination note which stated "integrity issues and inability to perform managerial duties" as grounds for dismissal.

General Counsel contends that Cabral's discharge comprised part of the Respondent's retaliatory effort against managerial employees who failed to prevent a Union victory.

Katheline Hyde

Hyde worked as the Office Manager at the Islip Terrace facility until the termination of her employment on March 10. Respondent contends that Hyde attended a Union meeting on February 12, 2004. The following day, Hyde's supervisors, including Mr. Buonanote, called her into one of their offices to discuss her attendance at the meeting and questioned her loyalty to management. Buonanote also asked Hyde if she knew how several secretaries planned on voting in the Union election, and told her that she should remind the secretaries that a strike was "inevitable" if they voted in favor of unionization. During this meeting, Buonanote testified that Hyde and Navas, one of her supervisors, "went at it a little bit" and that Hyde rose out of her chair and raised her fist at Navas. Hyde denies the allegation and says that she merely got out of the chair to leave the meeting. As set forth above, I credit Hyde.

On March 8, 2004, Buonanote met with Hyde asked her again if she knew how the secretaries planned to vote. She responded that she did not know. Buonanote responded that the secretaries would listen to Hyde if she told them to vote "no," and that "he would know by the turnout if she did what she was supposed to do." On March 10, the day after the Union won the election, Buonanote testified he terminated Hyde, alleging her attendance at the Union's February 12 meeting, coupled with her exchange with Navas the following day, as the reasons for her discharge. The General Counsel contends that the Respondent's termination of Hyde's

employment was due to her failure to secure a “no” vote by the secretaries.

An employer does not violate the NLRA if it discharged Section 2(11) supervisors if motivated by disloyalty or the supervisors’ participation in union or concerted activity. See, Parker-Robb Chevrolet, Inc.²² However, in devising its standards, the Board has sought to strike a balance between the need to protect “the employer’s right to demand loyalty from his supervisors and the employee’s right to be free from unlawful labor practices funneled through a supervisor by the employer.” Automobile Salesmen’s Union Local 1095 v. NLRB.²³

Hence, “[t]he discharge of supervisors is unlawful when it interferes with the right of employees to exercise their rights under Section 7 of the Act, as when... they refuse to commit unfair labor practices.” Id. Additionally, the Board has held that an employer commits an unfair labor practice “where a supervisor is discharged because of his failure to prevent unionization.” ARA Leisure Services.²⁴ The employer need not explicitly give the supervisory employee instructions to commit unfair labor practices; a finding that the employer implied an expectation to stop unionization suffices to show that the employer committed an unfair labor practice. Florstar Sales.²⁵

In this case, Respondent has failed to establish that Barrett, Cabral, and Hyde acted disloyally, or participated in union activity. Other than the allegation that Hyde signed a Union card and attended a Union meeting, Respondent has offered no evidence that Barrett, Cabral and Hyde participated in activities constituting “disloyalty” to Respondent. ARA Leisure Services.²⁶ To the contrary, Barrett expressed her anti-Union sentiments to Buonanote. I conclude the supervisors remained loyal to Respondent and did not take an active role in the Union’s organization efforts.

Further, Buonanote’s actions and testimony clearly establish that he expected his supervisory employees to prevent unionization. As in Florstar, he held regular meetings with supervisors to develop a strategy for defeating the Union, instructed them to convince employees of the disadvantages of unionization, told them to tell the employees that he would not bargain with the Union and that there would be a strike and the employees would be replaced, and regularly interrogated them about their efforts.²⁷ Additionally, he constantly told his supervisors’ of their abilities to sway the clerical employees’ votes clearly implying that they would bear the costs if they failed to do so. For example, he told Hyde that if the Union won the campaign “he would know by the turnout if she did what she was supposed to do,” clearly implying that she was supposed to stop the secretaries from voting in favor of the Union.

I find on the basis of the supervisory employees credible testimony that Buonanote sent a clear and unequivocal message regarding his expectation that the supervisors aid in his unlawful antiunion campaign. Greenwich Air Services,²⁸ which states that where an employer discharged a supervisor for his refusal to stop employees from engaging in protected activities

²² 262 NLRB 402, 404.

²³ 711 f.2D 383, 386 (D.C. Cir. 1983).

²⁴ 272 NLRB 1300, 1307 (1984).

²⁵ 325 NLRB 1210, 1213 (1998).

²⁶ 272 NLRB at 1307 (holding that where the supervisory employees “were the backbone of the Union’s [organizing] effort,” termination of their employment did not constitute an unfair labor practice).

²⁷ Florstar, 325 NLRB at 1211.

²⁸ 323 NLRB 1162, 1167 (1997).

or fire a suspected union activist, the employer expected the supervisor to engage in illegal conduct.

Respondent contends that it fired Barrett, Cabral, and Hyde for reasons pertaining to their work performance. However, the fact that he fired the three supervisors on the same day, one day after the election, establishes a correlation between the Union's victory and the supervisors' discharge. See, e.g., *Transportation & Repair Service*,²⁹ determining that the discharge of an employee two days after a union election "suggests retaliatory motivation"; see also *Whitewood Oriental Maintenance Company*,³⁰ holding that the timing of a discharge twelve days after the union won the election "support[ed] an inference of illegal motivation."

Further, little or no evidence existed to show that the Respondent planned to terminate the employment of the three supervisors prior to the commencement of Union activities. *FlorStar Sales*.³¹ Though Cabral engaged in objectionable conduct, throwing pens and clips at a picture of Buonante, her discharge took place nearly two months later, despite the fact that her supervisors were informed of the incident almost immediately after it took place. Similarly, the Respondent discharged Hyde nearly a month after she allegedly attended a Union meeting; her supervisors had a more appropriate opportunity to terminate her employment when they met with her the day after this alleged misconduct. I find that coupled with the timing of the discharges the day after the Union won the election, the totality of the circumstances indicates that Respondent pretextually justified its actions as a reaction to performance concerns.

Respondent had the legal right to demand loyalty from Barrett, Cabral and Hyde during the Union campaign, and could discharge them for taking an active role therein. See, e.g., *ARA Leisure Services*,³² see also, *Automobile Salesmen's Union*.³³ However, the Board must protect a supervisor's right to refuse to act as a "funnel" to unit employees through which an employer commits unfair labor practices. See, *Automobile Salesmen's Union*.³⁴

Accordingly, I find that Respondent discharged Barrett, Cabral, and Hyde because they refused to participate in Respondent's anti-union campaign which consisted of serious, extended and voluminous violations of the Act.

I therefore find Respondent violated Section 8(a)(1) of the Act by discharging statutory supervisors Barrett, Cabral, and Hyde.

The Discharges of Dale, Mazzuco

To violate Section 8(a)(3) of the Act, an employer's conduct must discriminate in a manner that discourages membership in a labor organization. Under *Wright Line*,³⁵ the General Counsel has the initial burden to prove that union activity or other employee conduct protected by the Act was a motivating factor in an employer decision to take adverse action against an employee. A *prima facie* case of discriminatory conduct under Section 8(a)(3) of the Act

²⁹ 328 NLRB 107, 113.

³⁰ 292 NLRB 1159, 1167 (1989).

³¹ 325 NLRB at 1213.

³² 272 N.L.R.A. at 1307.

³³ 711 F.2d at 387.

³⁴ 711 F.2d at 386.

³⁵ 251 NLRB 1083 (1980), *affd.* 662 F.2d 899 (1st Cir 1981), *cert. denied* 455 U.S. 989 (1982).

requires the following: (1) that the alleged discriminate be engaged in union activity; (2) that the employer had knowledge of these activities; (2) that the employer's actions were motivated by union animus; and (4) that the discrimination has the effect of encouraging or discouraging union membership.³⁶ If the General Counsel meets this initial burden, the employer then has the burden to show that it would have taken the same action even in the absence of the protected conduct.³⁷

Heather Dale

I find the credible testimony of the various employees who testified about the numerous 8(a)(1) violations committed by Buonanote, and senior director Navas, Buonanote's own admissions, and the timing and manner of Respondent's discharges of supervisors and employees, are sufficient to establish a strong *prima facie* case that Respondent discharged Dale because of her Union activities in violation of Section 8(a)(1) and (3) of the Act.

It is undisputed that Respondent knew about Dale's support for the Union at the time of her discharge. Dale testified that during Buonanote's interrogations about why the employees needed a Union, she told him that she believed the employees needed a collective bargaining representative to negotiate about their terms and conditions. Mazzuco credibly testified that Buonanote told her that "employees like Dale were going to try to convince her to vote 'yes' for the union." The record evidence is sufficient to establish that Dale engaged in union activity and other protected conduct and that Respondent was aware that she was the main Union organizer.

I find there is also sufficient evidence to establish a causal link between Dale's discharge and her union activities during the campaign. The timing and the manner of her discharge coupled with the myriad of 8(a)(1) violations committed by Respondent is clearly sufficient to establish a causal link. Prior to February 12, Buonanote made it clear to Dale, and to all the employees that he would not tolerate a union at Respondent's facility and that no one was going to tell him how to run his business. Buonanote stressed to the employees that Respondent is his father's legacy and that he would not negotiate with a Union. Buonanote admitted he was very angry with the Union and its campaign because he believe that it was "trying to sabotage" his business.

On February 12, Dale questioned Director Kenney and Buonanote about the memo sent by Buonanote informing the employees that only counselors and clericals employed at the Islip Terrace facility would be eligible to vote in the election. Although Dale had accepted hr payroll transfer a week before the memo, she did not believe that the payroll transfer to Port Jefferson would affect her eligibility because she was still working at the Islip Terrace facility two days of the week. I find that when she read the memo, she believed the payroll transfer was an attempt by Buonanote to block her from voting in the election. In view of Respondent's unlawful campaign against the Union, and his daily threats, interrogations and other coercive conduct, I find Dale's belief was reasonable.

It is undisputed that Dale raised her voice to Director Kenney and Buonanote, and that she told Kenney that the reason given for her payroll transfer was "budgetary-bullshit." This conduct constitutes the *sole* basis for Respondent's claim of insubordination and his reason for

³⁶ *Downtown Toyota*, 276 NLRB 999, 1014 (1985), citing *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983); *Wright Line, Inc.*, *supra*.

³⁷ *Wright Line, Inc.*, *supra*.

the discharge.

There is no record evidence to show that Dale was violent, threatening, or that she engaged in any other misconduct that would exclude her from the protection of the Act. Kenney, with whom Dale worked as colleagues for more than a year credibly testified that prior to February 12, he never had any problem with Dale's work performance or with her conduct at work. In addition, Kenney admitted that he knew of numerous incidents where the employees used obscene language during working hours, and they were not warned, disciplined or terminated.

It is undisputed that from February 12 to February 19, Dale continued to work for Respondent without any further incident. In this regard, Buonanote testified that on February 13, the day after Dale questioned her payroll transfer, he showed Dale a copy of the Decision and Direction of Election to show Dale that it was the Board who decided that she was not eligible to vote. Buonanote testified that Dale told him, "okay. Just as long as I know you are trying to block my vote" and "if that's the decision, that's decision." Thus Buonanote admits that by February 13, Dale was prepared to accept that she may not eligible to vote in the election. Buonanote also testified that with the exception of the incident on February 12, he did not know of any other problem with Dale's conduct or with her work performance. Notwithstanding, on February 19, a week after her alleged insubordination, Buonanote brought five managers employed at other facilities to be present when he discharged Dale and called the police when she asked for time to pick up her personal belongings. I find the lack of justification for the extreme measures taken against Dale coupled with Respondent's egregious and unlawful anti-Union campaign, is sufficient to establish a strong *prima facie* case. The totality of the evidence is also sufficient to show that the real motivation to terminate Dale on February 19, was to send a clear and unequivocal message to the employees that Respondent would not tolerate any of their Union activities, and he was prepared to go to any length to keep the Union from being elected by them.

I find the testimony of the unit employees establishes they received the message sent by Respondent with the discharge of Dale. I find that message was if you support the Union, you will be fired. The secretaries questioned Buonanote about Dale's discharge. None of them knew Dale to be "erratic" as described by Buonanote, and they could not understand why Buonanote needed five managers to discharge a middle-age woman, who was only 5'2" tall.

In addition, Buonanote's own admissions, shows the pretextual nature of Respondent's defense. Buonanote admitted that on the Election Day, when Dale went to vote under challenge, he was angry because he had fired Dale, and he felt that she had no business in his office "regardless of what the law indicated." Buonanote further admitted his abusive language towards Dale, when she came to vote, that he screamed and yelled "fuck you" to her.

Based upon the above facts I find that General Counsel clearly established its *Wright Line* burden. I also find that Respondent's defense, Dale's insubordination on February 12, as set forth above, is not supported by the incredible testimony of Kenney and Buonanote. Therefore I find Dale was terminated by Respondent in violation of Section 8(a)(1) and (3) of the Act.

Mazzuco was one of the employees who attended the February 12 meeting at the Ocone Diner. This is the meeting surveilled by Navas. The next day, Navas told Gouge how "betrayed" she felt when she saw Mazzuco and Gouge at the Union meeting. As set forth above, Hyde's credible testimony show the animus behind the discharges of the secretaries, wherein Buonanote instructed Hyde to tell the secretaries that if the Union came in, he would

not negotiate and that a strike was “inevitable.” In addition, Buonanote told Hyde that he would know by the turn out how the secretaries voted.

Further, on March 10, a day after the Union won the election, and Mazzuco reported to work, Buonanote had already fired Cabral, Barrett and Hyde, virtually the entire supervisory staff. Mazzuco began her regular work assignment. Buonanote admitted that he was in the front office staring at Mazzuco, without saying anything, for about half hour. I find this to be coercive conduct.

It is undisputed that Buonanote told Mazzuco on March 10, on more than one occasion, that she “should start looking for another job.” When Mazzuco asked, are you firing me? Buonanote reiterated “just start looking for another job.” At this point, I find Mazzuco reasonably understood that Buonanote was firing her. She said goodbye and left. It is also undisputed that Mazzuco had already said goodbye to her fellow employees, and was leaving when she called Buonanote “asshole.”

General Counsel has clearly satisfied its *Wright Line* burden. In this regard, Respondent had knowledge of Mazzuco’s Union activities. Respondent also had intense anti-union animus as established by the unfair labor practices described above and below. Respondent had already discharged Dale, in violation of 8(a)(1) and (3) as set forth above, establishing that supporters of the Union would be discharged.

Respondent defense that Mazzuco simply abandoned her job is simply laughable.

Accordingly, I find that Respondent has not met its *Wright Line* burden and accordingly conclude that Respondent by discharging Mazzuco has violated Section 8(a)(1) and (3) of the Act.

As set forth above, on March 10, the day after the election, Gouge and DiFolco reported to work. Buonanote told Gouge, “If you think it is rough, you have no idea what you’re in for.” Navas told her how dare she wear a Union button on the day of the election. Gouge and DiFolco reported for work. Gouge started to do her usual work, pulling patients charts. Navas told her she would have to do what Navas told her to do. Navas then assigned Gouge and DiFolco to clean under the counter, work they had never done before. Gouge protested, and she and Buonanote and Navas began to scream at one another. Gouge yelled at one point she would not be treated like a dog. Buonanote screamed at both Gouge and DiFolco to “get out, get out”, and then told Navas that as of 6:00 p.m. Gouge would no longer be paid by Respondent.

By this time both Gouge and DiFolco had their coats on and were starting to leave, Buonanote body checked Gouge as they were leaving. Both Gouge and DiFolco credibly testified that when Buonanote told them to “get out” they assumed they were fired. I find such conclusion reasonable given Respondent’s unlawful campaign, the intimidation of the employees, and the discharge of Hyde. I totally find Buonanote’s testimony that he was only laying Gouge off for the day incredible, especially in view of the discharge of his supervisory staff on March 10, and my overall finding that all Respondent’s witnesses were untruthful.

In view of the above conduct, I find General Counsel has established a clear *prima facie* case and satisfied its *Wright Line* burden and totally reject Respondent’s defense of abandonment.

Accordingly, I find that by discharging Gouge and DiFolco, Respondent has violated

Section 8(a)(1) and (3).

Conclusions of Law

1. Respondent is engaged in interstate commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has committed various violations of Section 8(a)(1) of the Act including the discharges of Section 2(11) supervisors as set forth below.

4. Respondent has also violated Section 8(a)(3) of the Act by discharging employees as defined in Section 2(3) of the Act.

Remedy

Having found Respondent has engaged in the unfair labor practices described above, I shall recommend Respondent cease and desist therefrom and take certain action designed to effectuate the policies of the Act.

Accordingly, I shall issue a recommended Order requiring Respondent to cease and desist certain activities described below.

With respect to the discharges of the supervisors and the unit employees, I shall recommend they be offered unconditional reinstatement to their former positions of employment, or if such position no longer exists, to a substantially equivalent position of employment without prejudice to their seniority, or other rights previously enjoyed by them. I shall further recommend that they be made whole for any loss of earnings, or other benefits suffered as a result of their discharge, from the date of such action until the date that a valid offer of reinstatement, as defined by the Board, is made by Respondent. Backpay is computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950) with interest as prescribed by *New Horizon for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law, I shall issue the following recommended:³⁸

ORDER

Respondent Crossing Recovery Systems, Inc. d/b/a Crossing Rehabilitation Services, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Surveilling its employees, or giving the impression of surveilling their activities on behalf of Amalgamated Local 298, International Union of Allied Novelty and Production

³⁸ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

Workers, AFL-CIO, herein called the Union.

(b) Confiscating Union literature from its employees.

5 (c) Interrogating its employees about their membership in, or activities on behalf of the Union.

(d) Soliciting grievances from its employees.

10 (e) Promising to remedy grievances.

(f) Threatening its employees to eliminate benefits because of their membership in, or activities on behalf of the Union.

15 (g) Threatening its employees with more stringent work rules, installing a time clock, instituting new dress codes, or instituting more onerous working conditions because of their membership in, or activities on behalf of the Union.

20 (h) Threatening or otherwise discouraging employees not to act as a Union observer in a National Labor Relations Board election, or other Union positions.

(i) Terminating employees because of their membership in, or activities on behalf of the Union.

25 (j) Threatening its employees that it would be futile to select the Union as their collective bargaining representative.

30 (k) Threatening to cause a strike and replace the striking employees if the employees selected the Union as their collective bargaining representative.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

35 (a) Within 14 days of this Order make unconditional offers to Katheline Hyde, JoAnn Barrett, Evelyn Cabral, Christine Mazzuco, Heather Dale, Lillian Gouge, and Andrea DiFolco to their former positions of employment, and if such positions no longer exist, to a substantially equivalent position of employment without prejudice to their seniority, or other rights and privileges previously enjoyed.

40 (b) Within 14 days of this Order, make the above named individuals whole, as set forth in the Remedy provisions of this Decision. Backpay to start as of the date of their discharge, and to continue until a valid offer of reinstatement is made.

45 (c) Within 14 days of this Order, expunge from the personnel files of the above named individuals any written warnings and any documents relating to their discharge.

50 (d) Preserve and within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its Islip Terrace, New York facility copies of the attached Notice marked “Appendix.”³⁹ Copies of the Notice, on forms provided by the Regional Director for Region 29, after being signed by Respondent’s authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since

Dated, Washington, D.C.

Howard Edelman
Administrative Law Judge

³⁹ If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading, “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

10 The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT surveil our employees, or give the impression of surveilling their activities on behalf of Amalgamated Local 298, International Union of Allied Novelty and Production Workers, AFL-CIO, herein called the Union.

WE WILL NOT confiscate Union literature from our employees.

WE WILL NOT interrogate our employees about their membership in, or activities on behalf of the Union.

WE WILL NOT solicit grievances from our employees.

WE WILL NOT promise to remedy grievances.

WE WILL NOT threaten our employees to eliminate benefits because of their membership in, or activities on behalf of the Union.

WE WILL NOT threaten our employees with more stringent work rules, installing a time clock, instituting new dress codes, or instituting more onerous working conditions because of their membership in, or activities on behalf of the Union.

WE WILL NOT threaten or otherwise discourage employees not to act as a Union observer in a National Labor Relations Board election, or other Union positions.

WE WILL NOT terminate our employees that it would be futile to select the Union as their collective bargaining representative.

WE WILL NOT threaten our employees that it would be futile to select the Union as their collective bargaining representative.

WE WILL NOT threaten to cause a strike and replace the striking employees if the employees select the Union as their collective bargaining representative.

WE WILL within 14 days of this Order make unconditional offers to Katheline Hyde, JoAnn Barrett, Evelyn Cabral, Christine Mazzuco, Heather Dale, Lillian Gouge, and Andrea DiFolco to their former positions of employment, and if such positions no longer exist, to a substantially equivalent position of employment without prejudice to their seniority, or other rights and privileges previously enjoyed.

WE WILL within 14 days of this Order, make the above named individuals whole, as set forth in the Remedy provision of this Decision. Backpay to start as of the date of their discharge, and to continue until a valid offer of reinstatement is made.

WE WILL within 14 days of this Order, expunge from the personnel files of the above named individuals any written warnings and any documents relating to their discharge.

CROSSING RECOVERY SYSTEMS, INC. d/b/a
CROSSING REHABILITATION SERVICES

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

One MetroTech Center (North), Jay Street and Myrtle Avenue, 10th Floor
Brooklyn, New York 11201-4201
Hours: 9 a.m. to 5:30 p.m.
718-330-7713.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 718-330-2862.